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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/229,023	01/12/99	TAYLOR J	

LM02/0601

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EXAMINER	
SWANN III,G	

ART UNIT	PAPER NUMBER
2736	2

DATE MAILED: 06/01/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/229,023	Taylor, Jr.
Examiner	**Group Art Unit**
Glen R. Swann III	2736

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *THREE* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) *1-23* is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☒ Claim(s) *19-23* is/are allowed.

☒ Claim(s) *1, 2, and 4-18* is/are rejected.

☒ Claim(s) *1-11, 15, and 16* is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 & 5 are rejected under 35 U.S.C. 102(a) as being anticipated by Bieback. (5990793). Note Fig. 7, block 50, "Vital Signs Monitor" and Fig. 6 illustrating a command center in which the signals sent are recorded (block 72), i.e. archived.

5. Claims 4 & 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieback. Although only heart beat rate (claim 5) is explicitly disclosed, clearly *which* bodily signals to monitor is a design choice that would have been obvious to one of ordinary skill in the art at the time of the invention.

6. Claims 10 & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieback in view of Hoshen (5461390). Use of positional determining means in the portable units, as per Hoshen (Fig. 2) in the system of Bieback for the advantage of accurate locating available with such systems would have been obvious to one of ordinary skill in the art at the time of the invention.

7. Claims 2 & 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoshen in view of Lemelson et al (6054928). Addition of the monitoring of bodily signals disclosed by Lemelson et al. (Fig. 4) to the system of Hoshen would have been obvious to one of ordinary skill in the art at the time of the invention for the advantage of closer monitoring of the activities of the person wearing the device. It is noted that Lemelson et al. is relied on only for matter added to the disclosure of this application, matter not present in the parent application.

8. Claims 4-9 & 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 2 of each of claims 4-9, "further" should be deleted as this is the first such element recited in each case. In claim 12, line 20, it is felt "portable monitoring device" should read --monitored person-- since the *person* is the one having defined rules of conduct. Claims 13-16 depend from claim 12.

9. Claims 1-11 & 15-16 are objected to because of the following informalities: In line 1 of claim 1, "of" should be deleted (claims 2-11 depend from claim 1 and thus share in this objection). In claim 15, line 1, "comprises" should read --comprising-- (claim 16 depends from claim 15 and thus share in this objection). Appropriate correction is required.

10. Claims 19-23 are allowed.

11. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable (subject to the objection of paragraph 9, above) if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 12-16 would be allowable (subject to the objection of paragraph 9, above as to claims 15 & 16) if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

13. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: the date of the parent application is erroneous.

14. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and **should include that which is new in the art** to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:
(1) if a machine or apparatus, its organization and operation;
(2) if an article, its method of making;
(3) if a chemical compound, its identity and use;
(4) if a mixture, its ingredients;
(5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

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The Abstract is exactly the same as in the parent -- it should reflect what is new.

15. The disclosure is objected to because of the following informalities: On page 1, line 3, "11" should read --10-- (note paragraph 13, above) and "currently pending" should read --now U.S. Patent 5,867,103--. The numbers "1." (line 6) and "2." (line 10) should be deleted. On page 16, lines 15 & 16, "120" should read --80--. On page 23, line 18, "5" should read --4--. On page 26, lines 21-26 should discuss Fig. 13b. Appropriate correction is required.

16. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glen Swann at telephone number (703) 305-4384. He can normally be reached Monday through Thursday from 7:30 AM to 4:30 PM. He is also available on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, his supervisor, Jeffrey Hofsass, can be reached at (703) 305-4717.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist at (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 308-6296 or (703) 308-6306.

Hand-delivered responses should be brought to Crystal Park 2, 2121 Crystal Drive, Arlington, VA, Sixth floor (Receptionist).

GLEN SWANN
PRIMARY EXAMINER

SWANN:grs
May 23, 2000